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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMAS ORTIZ,

Defendant and Appellant.

H034547

(Santa Clara County

Super. Ct. No. CC787682)

Pursuant to a negotiated plea, Tomas Ortiz (defendant) pleaded no contest on March 25, 2009, to one count of battery causing serious bodily injury. (Pen. Code, § 243, subd. (d).) Defendant admitted that he had personally caused great bodily injury within the meaning of Penal Code sections 667 and 1192.7, subdivision (c). In exchange for his plea, the defendant was promised that if the court imposed a prison term it would be no more than two years.

On June 26, 2009, the court suspended imposition of sentence and placed defendant on formal probation for five years. Defendant was ordered to serve one year in county jail with credit for time served of three days. The court ordered that defendant pay various fines and fees and \$2,272.33 in restitution to "A.M.R." for an ambulance bill. The court retained jurisdiction in order to set victim restitution if or when the victim was located.

Thereafter, on July 31, 2009, defendant filed a notice of appeal challenging events based on the sentence or matters occurring after the plea.

We appointed counsel to represent defendant in this court. Counsel filed an opening brief that stated the facts, but raised no specific issues.

On October 28, 2009, we notified defendant of his right to submit written argument on his own behalf within 30 days. To date, we have not received a response from defendant.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we provide "a brief description of the . . . procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.)

#### *Facts*<sup>1</sup>

Defendant, a foreman at Adorno Construction Company in San Jose, along with Jose Corona and several other workers gathered at a construction site to prepare equipment for the next day. The group decided to buy some beer. Both defendant and Corona consumed alcohol. After consuming several beers, defendant and Corona removed their shirts and began play fighting, throwing punches into the air. Suddenly, defendant struck Corona on the left side of his face. Corona fell to the ground, not breathing. The other workers rolled Corona on to his side at which point he regained consciousness and vomited blood. He was taken home.

During the weekend Corona became very ill. He returned to work the following Monday, at which point defendant told him he could not work and took him to the hospital. Eventually, Corona had to undergo surgery for a fractured skull and a

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<sup>1</sup> The facts are taken from the probation officer's report in this case, the preliminary hearing held on October 2, 2008, and a formal sentencing hearing held on March 25, 2009, at which Corona testified.

hemorrhagic contusion on his right temporal lobe. Corona was left with impaired vision and hearing and memory loss.

### *Procedural History*

The Santa Clara County District Attorney filed a felony complaint on November 21, 2007, in which defendant was charged with one count of battery causing serious bodily injury. (Pen. Code, § 243, subd. (d).) The complaint contained an allegation that in the commission of the battery, defendant personally caused serious bodily injury to the victim. After a preliminary hearing held on October 2, 2008, defendant was held to answer.

Thereafter, on October 9, 2008, the Santa Clara County District Attorney filed an information in which defendant was charged with one count of battery causing serious bodily injury. (Pen. Code, § 243, subd. (d).) The information alleged that defendant had personally caused great bodily injury within the meaning of Penal Code sections 667 and 1192.7.

On March 25, 2009, defense counsel outlined the plea agreement set forth *ante*.

Before taking defendant's plea, the court advised defendant of his privilege against self-incrimination, his right to confront his accusers and his right to trial by jury as required by *Boykin v. Alabama* (1969) 395 U.S. 238 (89 S.Ct. 1709), and *In re Tahl* (1969) 1 Cal.3d 122.<sup>2</sup> Defendant freely and voluntarily waived those rights. Defendant was advised that the maximum potential sentence for the charge to which he would be entering a plea was four years; that if the court placed him on probation it could be for as long as five years; that if the court decided to place him on probation and thereafter he violated his probation he could be sent to state prison for up to four years. The court advised defendant of the possible immigration consequences of his plea. The court advised defendant that there were other consequences of his plea, including that if the

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<sup>2</sup> Defendant was assisted by a Spanish speaking interpreter.

court placed him on probation he could be ordered to serve one year in county jail and be ordered to pay a general fund fine not to exceed \$10,000 plus penalty assessments. As to future consequences, the court advised defendant that because he was going to be pleading to a violent felony, if he committed certain offenses in the future, any sentence he received could be increased by an additional five years per count, he would be ineligible for probation and that if he committed another felony any sentence would be automatically doubled. The court found that defendant had been properly advised of the charges and possible defenses and consequences of his plea; that defendant had been fully informed of his constitutional rights; and had made a "knowing, intelligent, free, and voluntary waiver of those rights." The court found a factual basis for defendant's plea.

#### *The Sentencing Hearing*

As noted, the court suspended imposition of sentence and placed defendant on five years formal probation. The court found unusual circumstances in this case—the "nature of what was going on when the injury occurred; the alcohol, the play fighting."

#### *Conclusion*

Our review of the entire record satisfies this court that defendant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

*Disposition*

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.